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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,233	10/28/2003	Harold H. Greenberg	3003-A-6	4954
26740 7590 02/23/2007 C. ROBERT VON HELLENS CAHILL, VON HELLENS & GLAZER P.L.C. 155 PARK ONE, 2141 E. HIGHLAND AVENUE PHOENIX, AZ 85016			EXAMINER LAUX, JESSICA L	
			ART UNIT 3635	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		02/23/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/695,233	GREENBERG ET AL.	
	Examiner	Art Unit	
	Jessica Laux	3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 December 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9, 17, 18 and 23-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-9, 17, 18 and 23-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

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### **DETAILED ACTION**

Acknowledgment is made of the RCE filed on 12/26/2006. Accordingly claims 1, 3, 5, 6, 8, 17-18, 23, 26, 28, 30-32 have been amended and claim 35 has been added.

### ***Response to Arguments***

Applicant's arguments filed 12/26/2006 have been fully considered but they are not persuasive.

Applicant argues that the wall of Greenberg does not have the end results that the wall of Gravier does and that tensioning rods are not necessary for the wall of Gravier, therefore one would not be inclined to install tensioning rods since the wall of Gravier inherently has the strength of the Greenberg wall. These arguments are not persuasive because Greenberg is not relied upon for its teaching of the end result of the wall but rather for the use of vertical tensioning rods to provide further support to a wall. Further applicant's argument that the wall of Gravier does not need vertical tensioning rods because it inherently has the sought after strength is not persuasive because the necessary strength of a wall depends on the forces that the wall will be subject to which will vary depending on the use and location of the wall. Therefore, examiner does not agree that the wall of Gravier inherently has the appropriate strength. Should the wall be in a location where it is subject to larger forces the wall would need additional reinforcing which would be achieved by the use of vertical tensioning rods as disclosed by Greenberg (and explained in the office action rejection).

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Applicant also argues that Gravier does not teach the use of a lintel and recites that elements 18, 88 and 89 are not lintels. Examiner never indicated that elements 18, 88 and 89 were lintels but rather indicated elements 14 and 15 to be lintels (as the structurally and functionally perform as lintel for the wall).

Applicant argues that Gravier does not disclose tensioning rods in the posts. Examiner disagrees noting that the reinforcing rods disclosed by Gravier provide support in tension to the post and therefore are tensioning rods.

In light of the above response to arguments the rejection of the previous Office Action is maintained and included herewith.

***Claim Rejections - 35 USC § 112***

Claims 1 and 26 (and all depending) are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims recited the limitation "adjacent ones of said footings" (and posts), however there is lack of antecedent basis for this limitation in the claims as the structure has not been claimed in such a way as to provide adjacent footings or posts.

Additionally the claims recite the limitation "plurality of footings disposed... at each end of said wall". This is indefinite as the claims have not provided an end (or each end) to the wall structure. Also, it is unclear if the plurality of footings is 'one at each end' or if there is 'a plurality at each end'.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 and 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gravier et al. (5623797) in view of Greenberg (4726567).

In regards to claim 1: A wall structure having an above ground wall, said wall structure comprising in combination:

a) a plurality of footings disposed at least partially in the ground at each end of said wall (Figure 1; 16 and 17);

b) said wall including at least a lintel (Figure 1, where elements 14 and 15 indicate the lintel of Gravier), each end of said lintels being located upon and receiving support (Figure 1 – the bottom block place directly on footings 16 and 17) from adjacent ones said footings to locate each of said lintels above ground and a plurality of courses extending upwardly from each of said lintels;

d) a post (generally indicated as 45 of Figure 1) extending upwardly from each said footings; and

e) at least one further tensioning rod extending upwardly from within each of said footings (66) and into the respective one of said posts and adapted for resisting tilting of said wall.

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Gravier et al. does not teach at least one tensioning rod extending upwardly from each of said lintels into at least some of said plurality of courses. Greenberg teaches a wall structure wherein post-tensioning rods are positioned at a predetermined interval along the fence and are imbedded at one end in a footer (which is structurally and functionally equivalent to the lintel of Gravier) and extend upwardly through the wall (Figure 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the structure, as taught by Gravier et al., to have post tensioning rods extending through the wall, as taught by Greenberg, as the rods would provide necessary additional structural support to the wall if forces exerted on the wall required such.

In regards to claim 2: The wall structure as set forth in Claim 1 above, including a plate (Figure 1 – the bottom block place directly on footings 16 and 17) disposed on each of said footings for supporting an end of said lintel.

In regards to claim 3: The wall structure as set forth in Claim 1 above, wherein each of said posts includes a vertical slot for receiving an end of said wall (Figure 1).

In regards to claim 4: The wall structure as set forth in Claim 3 above, including a plate (Figure 1 – the bottom block place directly on footings 16 and 17) disposed on each of said footings for supporting said post and said lintel.

In regards to claim 5: The wall structure as set forth in Claim 3 above, wherein an end of each of said lintels extends into said slot of each of adjacent ones of said posts (Figure 1).

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In regards to claim 6: The wall structure as set forth in Claim 3 above, including at least one rebar disposed longitudinally within each of said lintels and grout (Col. 4, lines 41-43) for imbedding said rebar within said lintel and a lower end of at least one of said tensioning rods.

Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gravier et al. (5623797) in view of Greenberg (4726567) and further in view of Wallin (5864999).

In regards to claim 7: Gravier et al. in view of Greenberg teaches the wall structure as set forth in claim 1 above, but does not teach that the lintel is generally C-shaped in cross section. Wallin teaches the use of a C-shaped lintel (9 and 10; Figures 6 and 8) in a wall structure as a common and known practice in the art. Therefore it would have been obvious to one of ordinary skill in the art to modify Gravier et al, in view of Greenberg to have a lintel that is C-shaped.

In regards to claim 8: The wall structure as set forth in Claim 1 above, wherein said lintel includes a longitudinally oriented upwardly facing opening (Figures 6 and 8).

In regards to claim 9: The wall structure as set forth in Claim 8 above, wherein said tensioning rods extend upwardly through said opening (Figure 11).

In regards to claim 17: The wall structure as set forth in Claim 1 above, wherein said plurality of courses comprise concrete masonry units (Greenberg – Col. 2, lines 50-51).

In regards to claim 18: The wall structure as set forth in Claim 1 above, wherein said plurality of courses comprise bricks having at least one passageway there-through.

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Gravier et al. in view of Greenberg does not teach the use of bricks. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to use bricks that have at least one passageway because Applicant has not disclosed that the use of bricks provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected the masonry units of the prior art, and applicant's invention, to perform equally well with either the masonry units or the claimed brick because both would provide a suitable wall structure. Therefore it would have been prima facie obvious to modify Gravier et al. in view of Greenberg to obtain the invention as specified in claim 18 because such a modification would have been considered a mere design consideration with fails to patentably distinguish over the prior art.

Claims 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gravier et al. (5623797) in view of Greenberg (4726567) as applied to claims 1-9 and 17-18 above.

These claims recite the basic steps of "developing footings", "installing tension rods", "placing plates", "building a post", "placing a lintel", "laying courses of brick or masonry", and "installing tensioning rods into the wall". As such, they merely recite the obvious method of forming the wall structure as recited in claims 1-9 and 17-18.

Claims 26-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gravier et al. (5623797) in view of Greenberg (4726567).

In regards to claim 26: A wall structure having an above ground wall, said wall structure comprising in combination:



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a) a plurality of footings disposed at least primarily in the ground at each end of said wall (Figure 1; 16 and 17);

b) said wall including a lintel, each end of said lintel being supported above ground on adjacent ones of said footings and a plurality of courses extending upwardly from said lintel;

d) a post extending from a respective one of said plurality of footings (Figure 1; 12 and 13) for supporting an end of said wall, said post including a vertical slot for receiving the corresponding end of said wall (Figure 1); and

e) at least one further tensioning rod (Figure 1; element 66) extending upwardly from within each a respective one of said plurality of footings into the respective one of said posts and adapted for resisting tilting of said post.

Gravier et al. does not teach at least one tensioning rod extending upwardly from said lintel into said wall. Greenberg teaches a wall structure wherein post-tensioning rods are positioned at predetermined interval along the fence and are imbedded at one end in a footer and extend upwardly through the wall (Figure 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the structure, as taught by Gravier et al., to have post tensioning rods extending through the wall, as taught by Greenberg, as the rods provide additional support to the wall.

In regards to claim 27: The wall structure as set forth in Claim 26 above, including a starter course (Figure 1 – the bottom block place directly on footings 16 and 17) disposed on the respective one of said plurality of footings for supporting an end of said lintel.

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In regards to claim 28: The wall structure as set forth in Claim 26 above, including at least one rebar disposed longitudinally within said lintel and grout (Col. 4, lines 41-43) for imbedding said rebar and a lower end of said tensioning rod within said lintel.

Claims 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gravier et al. (5623797) in view of Greenberg (4726567) and further in view of Wallin (5864999).

In regards to claim 29: Gravier et al. in view of Greenberg teaches the wall structure as set forth in claim 26 above, but does not teach that the lintel is generally C-shaped in cross section. Wallin teaches the use of a C-shaped lintel (9 and 10; Figures 6 and 8) in a wall structure.

In regards to claim 30: The wall structure as set forth in Claim 26 above, wherein said lintel includes a longitudinally oriented upwardly facing opening (Figures 6 and 8).

In regards to claim 31: The wall structure as set forth in Claim 30 above, wherein each of said tensioning rods extends upwardly through said opening (Figure 11).

Claims 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gravier et al (5623797) in view of Greenberg (4726567).

These claims recite the basic steps of "developing footings", "installing rods", "building posts", "locating a lintel", "laying courses of brick or masonry", and "installing rods through the wall". As such, they merely recited the obvious method of forming the wall structure as recited in claims 1-31 (above).

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**Conclusion**

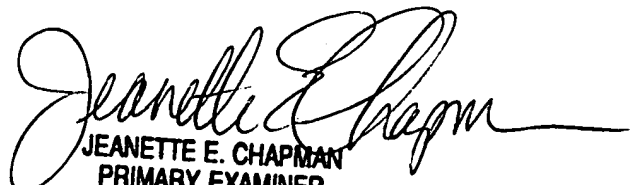
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica Laux whose telephone number is 571-272-8228. The examiner can normally be reached on Monday thru Friday, 6:30am to 2:30pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JL

JL  
01/30/2007

  
JEANETTE E. CHAPMAN  
PRIMARY EXAMINER  
GROUP 3400